April 10, 2002

VIA ELECTRONIC FILING

Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

RE: FERC Docket No. RM01-12-000
IPUC Comments Regarding Working Paper

Dear Secretary:

Enclosed for filing with the Commission is an electronic original of the Idaho Public Utilities Commission's Comments in the above referenced matter.

Respectfully submitted

Donald L. Howell, II
Deputy Attorney General

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Electricity Market Design and Structure.	)	Docket No. RM01-12-000
Working Paper.	)	
______________________________________	)	

COMMENTS OF THE IDAHO PUBLIC UTILITIES COMMISSION

I. INTRODUCTION

On March 15, 2002, the Federal Energy Regulatory Commission (Commission) published a Working Paper on standardized transmission service and wholesale electric market design. To allow for this discussion, the Commission provided Notice to the public on March 15, 2002, that comments on the Working Paper could be submitted in the above-referenced docket through March 27, 2002. On March 25, 2002, the Commission extended the deadline for comments until April 10, 2002.

The Idaho Public Utilities Commission ("IPUC") provides comments on a limited number of issues raised in the Working Paper. The slightly extended comment deadline is inadequate to study and address the full range of complex and inter-related issues contained in the Working Paper. And the lack of detail and specificity in much of the Working Paper makes it necessary to defer more analytical comments until the expected Notice of Proposed Rulemaking offers more time for additional study and comment. Our recommendation is that FERC hold technical conferences on the Working Paper prior to the issuance of a Notice of Proposed Rulemaking with the expectation that many of the technical aspects of standardized market design could be explained and discussed in greater detail.

The scope of our comments at this point is confined to a limited set of key issues of concern to the State of Idaho. Our silence on some issues should not be taken as evidence of support. We have serious concerns whether a standardized wholesale market structure is an appropriate policy objective at this time, particularly for our state and the Pacific Northwest region.

II. NAME AND IDENTITY OF COMMENTER

1. The name and address of the commenter:

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2. All correspondence, communications, and pleadings in this proceeding should be sent to each of the following:

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III. COMMENTS ON THE WORKING PAPER

Regional Differences Are Important

The IPUC agrees with the Commission's recognition that regional differences exist in electricity systems. At item 11 on page 14, and again at item 7 on page 17, we see that "additional scheduling options may need to be developed to address the special conditions facing energy-limited resources (e.g., hydroelectric power and environmentally constrained thermal power)." It is rare and for that reason worthy of commendation, to see recognition that hydroelectric generation and the regions that depend heavily on it may have specific operating concerns. We see our regional differences as a counterbalance to the idea of a standard market design for the entire U.S.

We urge the Commission to consider those regional differences when scheduling or transitioning to any new requirements imposed from the implementation of a standard market design. A standard market design that is compatible with existing institutions in the tight eastern power pools may not be equally appropriate for the West. In fact, we urge the Commission to allow regional flexibility in meeting the goals of more efficient and effective wholesale electricity markets so that regional differences in system operating characteristics can be accommodated.

Priorities Have Become Confused

Since the summer of 1999 many parties and hundreds of individuals in the Pacific Northwest and elsewhere in the country have devoted countless hours to debate and shape and then comply with the Commission's policy initiatives aimed at improving wholesale market performance through the establishment of Regional Transmission Organizations (RTOs). Serious work has already been accomplished in the direction set by the Commission in Order No. 2000, aimed at the establishment of voluntary RTOs. We are heartened at the willingness of the Commission to listen to Pacific Northwest concerns and to provide some measure of deference to the good-faith efforts of entities in the Western Interconnection to craft new institutions that meet our needs while moving in the direction the Commission desires.

Much of that work is still underway and will require continued commitment to reach its ultimate destination. A broad new initiative on a Standard Market Design is certain to detract from the resources and raise questions about the commitment in the region to finish design and implementation of an RTO that suits Northwest needs. Such a disruption will increase costs, heighten uncertainty about where resources should be allocated, and undermine investment in needed infrastructure. For the Commission to step off in a new direction raises questions about whether resources have been squandered on trying to shape an RTO process to regional needs and whether and how this new effort might be complementary with or contrary to processes already underway. Even if this new initiative is an effort in the same direction as the RTO process, one wonders how it can be in the public interest to force interested parties in the Pacific Northwest to either divide their resources between the two processes or decide to support one or the other, but not both.

We ask the Commission to avoid aggressive implementation schedules on this new initiative and to continue to support work already underway to design an RTO West responsive to the Commission's existing policy direction.

Support for Existing Rights

The Working Paper affirms at page 7 that "customers under existing contracts (real or implicit) should continue to receive the same level and quality of service under standard market design" and at page 8 states a policy to "preserve the existing rights of current users of the system." We applaud this affirmation that preservation of existing rights is an important objective that extends to implicit as well as explicit contracts. Retail customers taking bundled service depend on their utility's continued access to its owned- and contracted-for transmission capacity. Retail customers pay for the investment the utility has made in transmission plant dedicated to their service as well as its current operational cost.

Some of the implicit transmission rights at issue in market standardization are associated with the capacity necessary to afford adequate and reliable service to native load customers of regulated utilities. We are concerned that use of the term "implicit" rights might indicate a diminished importance of native load rights. We feel compelled to point out that these "implicit" rights are really much more legally binding than the word implies. Service to native load customers is the legal responsibility of regulated utilities in Idaho. We see these rights and responsibilities as guaranteed by Idaho state law rather than being a creation of standard commercial contracts.

The Purpose of Markets

The lessons learned section at item 6 on page 6 appropriately notes that market rules must be neutral, that is, must not unduly bias the choice between demand or supply sources. Furthermore it notes that demand resources "should be able to participate fully in energy, ancillary services and capacity markets." The IPUC agrees fully that demand response is essential to assure efficient interaction of supply and demand and to act as a check on market power. It is for those two reasons that we are working to provide a meaningful opportunity for customers to make informed choices in the selection of authorized supply and demand resources.

But item 8 on page 6 succumbs to the inappropriate notion that choice is valuable in its own right. Choice has little inherent value, at least insofar as it pertains to energy. Demand response is essential because it makes for efficient markets. Choice has value only to the extent that it improves market functioning. We favor demand response for the vital reason that such choice is essential to effective market performance. Some of the calls for demand response and market signals seem to place concern for markets ahead of concerns for consumers, who need access to reliable, universal electric service at a reasonable rate.

Demand Response is a Retail Matter in States with Fully Bundled Service

Over the last two years, experience in Idaho and in the Pacific Northwest in general has borne out the value of demand management programs. During the drought conditions and astronomical wholesale prices of 2000-2001, Idaho investor-owned utilities under the jurisdiction of the IPUC operated several programs to encourage reduction in electricity usage. All were successful in tempering demand. These demand response programs helped regulated utilities manage the physical balance between loads and resources and reduce the costs of wholesale power purchases in a time of extraordinary price pressure. More importantly to the IPUC, utilities were able to keep retail prices lower than they otherwise would have been.

We do not question the importance of demand response. But we seriously question the right of any standard wholesale market design to permit or authorize direct participation of retail customers in wholesale markets. As noted in previous responses to the Commission on this topic made by the IPUC and by our colleagues at the Washington Utilities and Transportation Commission, the retail market is in the jurisdiction of the States, and demand response is fundamentally a retail matter. *New York, et al. v. FERC, et al.*, 555 U.S. ___, slip op. at 22 (March 4, 2002). In our fully regulated state retail consumers have *nothing* to sell in a wholesale power market. Their utility provides service to them under a state statutory service obligation. The consumer has no title or anything akin to a "property right" for service that would allow her to sell the utility's capacity or energy to someone else.

Permitting retail customers to sell their energy savings in the wholesale market independently of their utility would undermine the ability of the utility to manage its resources and loads and ultimately undermine the reliability of retail service. Further, it would render meaningless a state policy decision not to open retail service to competition. Retail customers in bundled retail states cannot buy directly from wholesale markets (retail wheeling) nor can they sell load reductions in those markets (reverse retail wheeling).

The Commission should clarify that, in states with bundled retail service, it is utilities that represent retail customers for demand response in wholesale markets, and that the decision to design and implement retail demand response programs rests with the utility and appropriate state authorities. The Commission should clarify that it will work with the affected states in these circumstances where demand-side bids are to be required in power markets.

What Are Acceptable Demand Response Mechanisms?

We echo National Rural Electric Cooperative Association (NRECA) comments on this issue made in previous FERC proceedings. NRECA applies a reasonableness approach to demand response, offering support for initiatives that can lower power costs for all of a power company's consumers. Regulated utilities in Idaho during 2001 offered programs for small consumers to engage in programs whereby customers could receive a specified bill credit in return for achieving certain energy savings goals when the utility was short on power or power was unduly expensive. Those same utilities also provided large industrial consumers and irrigators economic incentives to shed load for periods ranging from a few days to a full irrigation season. These programs were designed to share the value of load reduction with participants and non-participants alike so that all consumers on the system benefit.

Certain demand response programs could create a secondary market for electricity that allows individual consumers – usually large industries – to gain all the profit of power sales while leaving load serving entities and their other consumers with all the risk. That would seriously hamper the ability of utilities and regulators to assure all consumers have access to reliable, universal electric service at reasonable rates.

Certain proposals could undermine existing demand-side management and other load reduction programs. Many utilities are already using voluntary load reduction programs now to shave peaks and reduce their exposure to risk in the wholesale markets. Customers are unlikely to participate in a voluntary program that shares the value of the unused power if they are allowed by the Commission to keep the full value of the power by selling it directly into the wholesale market.

Jurisdiction

The Commission's goal of facilitating successful demand response programs is laudable. But the issue of the reach of the Commission's jurisdiction over demand response programs cannot be ignored. Further clarification on this aspect of the Commission's Standard Market Design is vital.

The Commission has previously noted in orders relating to the California situation that it would allow retail customers, as permitted by state laws and regulations, and wholesale customers to reduce consumption for the purpose of reselling their load reduction at wholesale. But the Commission overreaches if it asserts jurisdiction over the retail customer, as with the pure load reduction agreement, where there is no actual sale of energy but rather only the agreement to reduce load and not to consume. The goal should be not to assert new jurisdiction but to work cooperatively with the States to achieve a common good.

Because a demand resource is a *customer* resource, there are repercussions for retail rates which States cannot ignore. These include the local, state, and regional economic impacts of having a customer shut down or cut back on production, the shifting of costs to other customers or customer classes, and possible reliability and air quality impacts from back-up generation being brought on line. Because these impacts have the potential to be translated into retail rates for which the States bear responsibility, the States should determine how to coordinate customer participation in wholesale markets so that they can balance the benefits to participants against the costs to non-participants.

Another reason for the States to maintain their role in demand resource programs is that there is not a uniform level of sophistication among customers and customer classes. Not all large industrial customers possess the knowledge or interest necessary to participate in demand response programs because that is not their primary line of business. Other customer classes could participate in demand resource programs but are too small to be considered absent some type of aggregation. Whether and how smaller customers are aggregated as demand resources should be a State decision. The States are in the best position to coordinate customer participation in wholesale markets.

Finally, the IPUC urges the Commission to consider that the Standard Market Design proposal may lead to conflicting, rather than complementary, wholesale and retail demand response programs, which will diminish the benefits of both. Idaho and many other states have demand-side programs, some of which are longstanding, in place for various retail customer classes. These programs bring benefits to customers and create more efficient use of resources. The inclusion of demand resource bidding in wholesale markets creates an opportunity for possible double dipping or double counting for customers who try to participate in both wholesale and retail demand resource programs. Thus, in order to maximize the benefits of both demand resource bidding at the wholesale level and demand-side programs at the retail level, coordination of customer participation needs to occur. And the entities best suited to insure that coordination, because of our knowledge of and experience with retail customer programs, are the state commissions.

IV. CONCLUSION

The IPUC requests that the Commission consider conducting technical conferences on the standard market design proposal contained in the Working Paper so that its implications can be further explored before the issuance of a Notice of Proposed Rulemaking. We believe that this would be more helpful and efficient in the process of arriving at a standardized market design than moving too rapidly to the more formal NOPR process. We also urge the Commission to maintain enough flexibility in market design to allow regional operating and system characteristics to be accommodated. We also ask the Commission to give the current RTO West effort the opportunity to address issues related to an appropriate market design for the Pacific Northwest region, so that the value of the work that has gone into this effort is realized, rather than abandoned. We also ask the Commission to acknowledge the binding nature of native load rights in those states like Idaho, where vertically integrated utilities provide bundled electric service.

These comments should make it quite clear that Idaho is not "just saying no" to demand response. Rather, Idaho is clarifying that demand response remains primarily under state jurisdiction and that any incursion by the Commission into this arena must be crafted carefully to assure that it complements state efforts. Thus, we urge the Commission to allow the States to coordinate customer participation in demand resource programs to insure that the benefits of such participation are maximized.

RESPECTFULLY SUBMITTED this 10th day of April 2002.

FOR THE IDAHO PUBLIC UTILITIES COMMISSION

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